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May 26, 2017

Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square – Suite 410
New York, NY 10007

Re: United States v. Pedro Ernesto Mina Olivo
16 Cr. 614 (ER)

Dear Judge Ramos:

I write in advance of Pedro Mina Olivo's sentencing on June 6, 2017 for his role in transporting cocaine on a small boat in the Pacific Ocean between Ecuador and Central America.

Mr. Mina-Olivo is a subsistence fisherman from the port town of Esmeraldas, Ecuador. He has spent most of his life living with his family in small, shack-like dwellings without running water or electricity. He does not read or write Spanish, much less English. His first time setting foot in any country other than Ecuador was when he was arrested in this case.

Because Mr. Mina-Olivo's family, including his wife, seven children, and his mother, are not able to travel from Ecuador to address the Court, I have prepared a short video (nine minutes) containing brief interviews with them and others along with footage of his hometown. I ask the Court's indulgence to review it before sentencing. It better describes his background and circumstances than anything I can present in this letter.

Mr. Mina-Olivo, along with two other friends and fishermen, played a minor role in the transportation of a large amount of cocaine. He did not know the type or quantity of drugs that he was transporting. He only knew that he was being promised a lot of money in his world -- \$3,000 -- to help drive a boat to a location in the ocean determined by a preset navigation device that was given to the three men. Because of his extremely limited role in the offense and his dire life circumstances, I ask the Court to sentence him to time served.

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The Offense

In July of last year, Mina Olivo and his friends and fellow fishermen (now co-defendants) Jhonny Rodriguez Jimenez and Kleber Mera Estupinan, were playing soccer on a make-shift field after work when they were approached by two men about a job. As on most days, Mina Olivo and his friends had been fishing in the shallow waters just off the coast of their hometown, Esmeraldas. At the time, soccer and fishing were about the only normal things happening in the men's lives. Three months earlier, on April 16, 2016 at 6:58 in the evening, Esmeraldas was hit with one of the biggest earthquakes in the history of South America, a magnitude 7.8 quake that resulted in approximately 700 deaths and over 16,000 casualties. *See Reuters, Death Toll from Ecuador Earthquake Surpasses 650* (Apr. 23, 2016) found at <http://www.reuters.com/article/us-ecuador-quake-idUSKCN0XK0GQ>. During the earthquake, Mina-Olivo's home, where he lived with his wife and five of his children, was destroyed. Since the quake, they had been living in a temporary space provided by their church.

When the two men approached the soccer field, Mina Olivo recognized one of them. He was a fellow fisherman who was sometimes at the port. Mina Olivo did not recognize the other man. After some small talk, the two men offered Mina Olivo and his friends \$3,000 each to take a boat out to sea for several days, look out for any Coast Guard boats at a location near the Galapagos Islands, and radio back if they saw any. Mina Olivo thought the request was strange and assumed there was something illegal about the activity, but he did not know what. The two men took Rodriguez Jimenez's phone number and told them to think about it.

Mina Olivo and his friends discussed it and decided to accept. The money was too good to turn down in such desperate times, and not much seemed to be asked of them. Several days later, they met up with the two men again, were paid \$1,500 up front and told they would receive another \$1,500 when they got back. They were taken to the port, got in a small fishing boat and were driven two hours out to sea where they met up with a second boat. They were told to get in the second boat, a slightly bigger "go-fast" boat and were shown preset navigation equipment and a satellite phone and told how to use it. The initial driver of the second boat transferred to the first boat, leaving Mina Olivo, Rodriguez Jimenez, and Mera Estupinan alone to navigate the second boat according to the pre-set equipment. Numerous canisters of fuel and containers of food were on the boat. Also on the boat in a middle hold were large box-like containers wrapped in plastic tarp. They were told not to open the containers, and they obeyed. They were told that the navigation equipment would direct them to a third boat near the Galapagos Islands. At this point, Mina Olivo assumed they were likely transporting drugs.

The men drove the boat for two days out to sea, following the preset navigation equipment instructions. On the second night, another boat approached from behind. They could not see who it was and thought it might contain bandits of some sort. They sped up, trying to get away, and then heard gunshots and realized their engines had been shot out. The boat turned out to be the U.S. Coast Guard. Officers from the Coast Guard boarded the boat and detained Mina

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Olivo and the others. A search of the containers wrapped in tarp revealed that they contained a large quantity of cocaine.

Mina Olivo and the others were brought to a location unknown to them in Central America and then on to Guantanamo Bay. After several weeks of detention and travel, they were flown to the Southern District of New York.

Mina Olivo's Background and Circumstances

Mina Olivo grew up in Esmeraldas in the sort of poverty that barely exists in the United States. He was raised in a home without electricity or water with his 9 siblings and two step-siblings. His father, who was physically abusive to Mina Olivo's mother and the children, left the family when Mina Olivo was three years old. Mina Olivo had virtually no formal schooling and began working to assist his mother in a shrimp factory when he was eight years old. At the same age, he was struck by a large tree limb in the head while gathering water for the family. The injury was serious and left him bedridden for months with virtually no long term memory. The scar on his head is still visible today. He slowly recovered, but to this day he attributes his illiteracy and limited cognitive abilities to the accident.

Mina Olivo began working at the port at age 10. He started by cleaning boats and doing odd jobs for the fishermen. Eventually, he began fishing himself. Because he could never afford the sort of boat or equipment necessary for larger fishing runs, most of his fishing was for shrimp and crawfish in the shallow waters near the port.

Mina Olivo's life has revolved entirely around the port of Esmeraldas. His first long-term relationship began when he was 16 years old when he began dating Ingrid Charcopa. They were together for six years and had two children, Andy and Brittany. Two years after they separated, he began his relationship with his current wife, Grecia Placios-Tenorio. They have now been together for 15 years. Together they have two children, Alvaro and Hillary. Grecia also had three children from a previous marriage. Mina Olivo raised those children as his own. He was proud to be a loving, providing step-father, in part because his own step-father had been so good to him after his abusive father left the family.

The attached video contains brief interviews with Grecia and some of their children. It is obvious from their reactions to questions about Mina Olivo that they love and respect him. He has been a good father and husband, and they miss him dearly. They also struggle mightily in his absence. Their lives have been turned upside down since the earthquake last year, and surviving without him has been challenging.

The video also shows Mina Olivo's mother outside of her home peeling shrimp as she does every day. She too struggles in the absence of her son and expresses how difficult it has been to worry about his well-being in a distant and foreign place.

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The Sentence

In the past few years, these “boat cases” have been brought with increasing frequency in the Southern District of New York. And in the past year, with nearly equal frequency, judges in this district have been varying far below the Guidelines. Last month Judge Caproni sentenced three defendants who were charged with the same offense charged here to time served (equating to 7 to 8 months for each). *See United States v. Lopez, et al.*, 16 Cr. 617 (VEC) (Dkt. No.s 68, 69, and 74)

Below is a chart showing the sentences of all defendants that counsel is aware of in cases with a 2016 docket number or later.

Name of Defendant	Case Number	Sentence
Oscar Marquez Riascos	16cr277 (GBD)	16 months
Eider Sinistera Solis	16cr277 (GBD)	18 months
Ivan Rafael Bailon Hernandez	16cr277 (GBD)	18 months
Bany Concepcion Lopez Eguizabal	16cr277 (GBD)	18 months
Francisco Quinones Betancurt	16cr316 (LGS)	24 months
Johnny Javier Cusme Lopez	16cr617 (VEC)	Time served – 8 months
Jhefferson Escobar Montano	16cr617 (VEC)	Time served – 7 ½ months
Nelson Antonion Ortiz Vite	16cr617 (VEC)	Time served – 7 months

Here, I ask the court to do what Judge Caproni did last month and sentence Mina Olivo to time served. He has been in custody in New York since August 12, 2016. By the time of his sentencing on June 6, he will have served the equivalent of a one-year sentence, accounting for good time.

Even a sentence of time served will result in serious punishment. Not only has Mina Olivo served the past 10 months at the MCC under circumstances that are as foreign to him as can be imagined, but he also spent several weeks in detention facilities in Central America and Guantanamo before being transferred to New York for prosecution. The transfer from place to

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place was difficult punishment by itself. And after serving his sentence in this case, he will endure additional detention in immigration facilities pending his removal to Ecuador. The three defendants sentenced by Judge Caproni (the first of whom was sentenced in early April), are still in ICE custody. The first defendant sentenced in that case (on April 12) has an ICE hearing set for June 15 though he is not contesting his removal.

Mina Olivo has no criminal history – here or in Ecuador. He was the lowliest of pawns for what is likely a much larger drug organization. Admittedly, the boat he was on contained a large amount of cocaine, but courts and commentators have repeatedly noted that quantity is a very poor proxy for culpability in drug cases. *See, e.g., United States v. Diaz*, No. 11 Cr. 821, 2012 WL 322243 (JG) (E.D.N.Y. Jan. 28, 2013) (discussing the history of the drug Guidelines formulation, how the Sentencing Commission mistakenly tied them to mandatory minimums based on nothing but weight, and why weight, as opposed to role, says little about culpability).

Mina Olivo has already been punished severely by his conduct. He has spent the past 10 months sitting in a detention center thousands of miles from his family knowing how much they are struggling without him. Further incarceration is not necessary to achieve any of the goals of sentencing.

Respectfully submitted,

/s

David Patton
Attorney for Mr. Mina Olivo

cc: Jason Swergold, A.U.S.A.
Amanda Houle, A.U.S.A.